CIVIL WRIT JURISDICTION CASE No.4048 OF 1990

In the matter of an application under Articles 226 and 227 of the Constitution of India.

DEO KUMAR PANDEY S/O HRIDYANAND PANDEY R/O VILLAGE MALAUR, PS. CHARPOKHARI, DISTT- BHOJPUR----PETITIONER

Versus

1. STATE OF BIHAR
2. THE MEMBER BOARD OF REVENUE,BIHAR PATNA
3. THE ADDITIONAL COLLECTOR,ARRAH,BHOJPUR
4. THE DY. COLLECTOR LAND REFORM SADAR,ARRAH
5. BAIJNATH PANDEY S/O GUPTESHWAR PANDEY
6. NUSAMMAT LALJKHARI KUER W/O SRIRAM PANDEY
7. ANIL PANDEY S/O LATE SRIRAM PANDEY
8. HRIDYANAND PANDEY @ PARMANAND PANDEY S/O LATE CHATU PANDEY, ALL R/O OF VILLAGE MALAUR, PS. CHARPOKHARI, DISTT-BOJPUR---------- RESPONDENTS

For The Petitioner :Mr. Bibhuti Pd. Pandey, Sr. Advocate
M/s suresh Chandra Giri & pravin kr. Sinha, Advocates
For The Private Respondent:Mr.Kapildeo Singh, Advocate
For the State: Mr.S. K. Barnwal, Advocate, JC to GP16

P R E S E N T
THE HON'BLE MR. JUSTICE AJAY KUMAR TRIPATHI

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A.K.Tripathi,J Heard learned senior counsel for the petitioner and learned counsel for the private respondents as well as counsel for the State.

Since a very limited question of law has been urged in support of the writ application the Court may not delve into all the details of the litigation and the background. However salient facts are recorded in this order for proper appreciation.

As per the petitioner one Sri Ram Pandey by way of a sale deed sold 8 decimals of land to Hridyanand Pandey. The sale deed was executed on 30.1.1981 but since the consideration money did pass, step was taken by Sri Ram Pandey to realize the consideration money. But on his failure he decided to execute

cancellation deed which was dated 23.2.1981. Two days thereafter on 25.2.1981 legal notice was also sent informing Hridyanand Pandey of the steps having been taken with regard to the sale deed. The legal notice was responded and a reply dated 3.3.1981 was given by Hridyanand Pandey. On 10.3.1981 the money was returned and the parties for all practical purposes treated the sale deed to be cancelled. Two events took place thereafter. First, on 14.4.1981 one Baijnath Pandey (respondent no.5) decided to claim pre-emption against the land by filing an application under section 16(3) of the Ceiling Act. Second, before filing of the case, on 8.4.1981 the present petitioner who is son of the original vendee decided to buy the piece and parcel of land for valid consideration.

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Taking cognizance of the application under section 16(3) of the Act all the three courts below allowed the pre-emption application and directed registration of the land in favour of the applicant and this is the background under which the present writ application has been filed challenging all the three orders.

Learned Senior counsel appearing on behalf of the petitioner submits that the trial court, the appellate court as well as the revisional court have committed basic error of law by holding that the cancellation deed will not take away the right, title and interest created by virtue of the sale deed because till the sale deed is declared to be invalid by a court of competent jurisdiction the action taken by the parties in this regard would not nullify the effect of such transfer and this is the basic reason that all the three

courts have held against the petitioner. But this view is not supported by law all the way.

In this regard reliance has been placed by learned senior counsel for the petitioner in a case of Most. Savitri Devi vrs. The State of Bihar & Ors reported in (1989) 2 BLJ 64. The Single Bench of this Court in a similar situation after considering the issue whether a cancellation deed had the effect of nullifying the sale was considered specially in the background of pre-emption matter. Learned Single Judge opined that it is well settled that a transfer means a valid transfer and in this view of the matter it is open to party to contend that irrespective of a recital in the deed of sale it is open to a party to urge that such a document was invalid in law as no consideration was received. The genuineness of the stand however could be considered by leading proper evidence which is permissible under section 92 of the Evidence Act. In other words right of pre-emption could never be validly exercised unless a valid transfer between the parties had taken effect.

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From narration of some of the facts it is evident that all steps have been taken between the vendor and the vendee much before the application under section 16(3) of the Ceiling Act came to be filed on 14.4.1981. If such a situation was asserted then it was open to the respondents to lead evidence to show that the entire transfer was a sham. Only then it may have been possible for the courts below to hold in their favour. But in absence of such

an exercise having been carried out and in view of the ratio laid down in the case of Most Savitri Devi (Supra) the petitioner has made out a case for interference.

In view of the above the impugned orders contained in annexures 1, 2 and 3 dated 18.12.1982, 10.7.1989 and 1.6.1999 respectively are quashed. This writ application is allowed. The matter is remanded back to the court of DCLR, Bhojpur at Arrah that he shall allow the parties to lead proper evidence in the matter before the issue will be decided afresh on the right of pre-emption of the parties.

(Ajay Kumar Tripathi, J.)

Patna High Court, Patna
Dated the 26th November, 2008
NAFR (RPS)

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